

MICHAEL J. GARCIA
United States Attorney
Southern District of New York
By: CAROLINA A. FORNOS
Assistant United States Attorney
86 Chambers Street
New York, New York 10007
Tel: (212) 637-2740
Fax: (212) 637-2702
Email: carolina.fornos@usdoj.gov

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DRUBNER & HARTLEY, L.L.C.,

Plaintiff,

v.

: ECF

: 08 Civ. 2355 (RMB)

UNITED STATES DEPARTMENT OF
COMMERCE, AND THE NATIONAL
TECHNICAL INFORMATION SERVICE,

: ANSWER

Defendants.

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Defendants the United States Department of Commerce, and the National Technical Information Service (“Defendants”), by and through their attorney, Michael J. Garcia, United States Attorney for the Southern District of New York, answers the Complaint of Plaintiff Drubner & Hartley, L.L.C. (“Plaintiff”) on information and belief as follows:

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

The allegations contained in the opening paragraph of the Complaint set forth Plaintiff’s characterization of this civil action, to which no response is required. To the extent a response is required, Defendants deny all allegations contained in this opening paragraph.

JURISDICTION AND VENUE

1. The allegations contained in Paragraph 1 of the Complaint set forth conclusions of law, to which no response is required. To the extent that a response is required, Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint.

PARTIES

2. Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Complaint.

3. Defendants deny the allegations contained in Paragraph 3 of the Complaint, except admit that the United States Department of Commerce is an agency of the United States organized under the Executive Branch of the Federal government with headquarters in Washington, D.C., and that it is charged with fostering, promoting, and developing foreign and domestic commerce of the United States, and that it has possession of some of the records sought by Plaintiff.

4. Defendants deny the allegations contained in the first and third sentences of Paragraph 4 of the Complaint, except aver that the National Technical Information Service (“NTIS”) is a Bureau of the Department of Commerce located in Springfield, Virginia and that it has possession and control of records sought by Plaintiff. With respect to the second sentence of Paragraph 4 of the Complaint, Defendants respectfully refer the Court to NTIS’s website for a complete and accurate statement of its contents.

STATEMENT OF FACTS

5. Defendants admit the allegations contained in the first, third and fourth sentences of Paragraph 5 of the Complaint. With respect to the second sentence of Paragraph 4 of the Complaint, Defendants respectfully refer the Court to NTIS's website for a complete and accurate statement of its contents.

6. Defendants deny the allegations contained in Paragraph 6 of the Complaint, except aver that Jeffrey Drubner sent a letter, dated August 14, 2007, addressed to the National Technical Information Center, and respectfully refer the Court to the letter for a complete and accurate statement of its contents.

7. Defendants deny the allegations contained in Paragraph 7 of the Complaint, except aver that the National Technical Information Service sent a letter, dated August 21, 2007, addressed to Jeffrey Drubner, and respectfully refer the Court to the letter for a complete and accurate statement of its contents.

8. Defendants admit the allegations contained in Paragraph 8 of the Complaint.

9. Defendants admit the allegations contained in Paragraph 9 of the Complaint.

10. Defendants deny knowledge and information to form a belief as to the allegations contained in the first sentence of Paragraph 10 of the Complaint. With respect to the second sentence, Defendants deny the allegations therein, except aver that the Department of Commerce declined to provide the requested information to Plaintiff.

11. Defendants deny knowledge and information to form a belief as to the allegations contained in Paragraph 11 of the Complaint, except aver that the United States Department of Commerce issued a letter to Jeffrey Drubner, dated January 30, 2008, and

respectfully refer the Court to the letter for a complete and accurate statement of its contents.

12. The allegations contained in Paragraph 12 of the Complaint set forth conclusions of law, to which no response is required.

13. Defendants deny the allegations contained in Paragraph 13 of the Complaint.

PRAYER FOR RELIEF

The allegations contained in the paragraphs of the Complaint following the word “WHEREFORE” set forth Plaintiff’s prayers for relief, to which no response is required. To the extent that a response is required, Defendants deny that Plaintiff is entitled to such relief.

DEFENSES

FIRST DEFENSE

The Court lacks subject matter jurisdiction over Plaintiff’s requests for relief that exceed the relief authorized by statute under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

SECOND DEFENSE

The Complaint should be dismissed for failure to state a claim upon which relief can be granted.

THIRD DEFENSE

The requested documents are exempt from disclosure under one or more FOIA exemptions.

WHEREFORE, Defendants demand judgment dismissing the Complaint and granting such further relief as the Court deems proper, including costs and disbursements.

Dated: April 30, 2008
New York, New York

MICHAEL J. GARCIA
United States Attorney
Southern District of New York
Attorney for Defendants

By: /s/ Carolina A. Fornos
CAROLINA A. FORNOS
Assistant United States Attorney
New York, New York 10007
Tel.: (212) 637-2740
Fax: (212) 637-2702

VIA EMAIL AND FIRST CLASS MAIL

TO: Charles S. Hellman
Drubner & Hartley, L.L.C.
One Penn Plaza, Suite 4507
New York, NY 10119